

ELLEN F. ROSENBLUM  
Attorney General  
CARLA A. SCOTT #054725  
SHEILA H. POTTER #993485  
CRAIG M. JOHNSON #080902  
Senior Assistant Attorneys General  
Department of Justice  
100 SW Market Street  
Portland, OR 97201  
Telephone: (971) 673-1880  
Fax: (971) 673-5000  
Email: Carla.A.Scott@doj.state.or.us  
Sheila.Potter@doj.state.or.us  
Craig.M.Johnson@doj.state.or.us

Attorneys for Defendants David Baden and Dolores Matteucci

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

DISABILITY RIGHTS OREGON,  
METROPOLITAN PUBLIC DEFENDER  
SERVICES, INC., and A.J. MADISON,

Plaintiffs,

v.

DAVID BADEN, in his official capacity as head of the Oregon Health Authority, and DOLORES MATTEUCCI, in her official capacity as Superintendent of the Oregon State Hospital,

Defendants.

JAROD BOWMAN, JOSHAWN DOUGLAS-SIMPSON,

Plaintiffs,

v.

DOLORES MATTEUCCI, Superintendent of the Oregon State Hospital, in her individual and official capacity, David Baden, Director of the Oregon Health Authority, in his official

Case No. 3:02-cv-00339-MO (Lead Case)  
Case No. 3:21-cv-01637-MO (Member Case)

PETITION FOR EXPEDITED RULING ON SUPREMACY CLAUSE ISSUE

capacity, and PATRICK ALLEN in his individual capacity,

Defendants,

## **I. Introduction**

The Oregon State Hospital (OSH) seeks this Court's assistance in resolving a Supremacy Clause issue arising from a recent order by the Marion County Circuit Court. Marion County Judge Audrey Broyles entered an order in a criminal case, calling for a criminal defendant to be transported to OSH for weekly "outpatient" restoration services, following his discharge from OSH after six months of in-patient restoration services failed to restore him to competency. OSH understands that the Marion County Circuit Court's order conflicts with orders issued by this Court and thus invoked the mediation process provided for by section VII of this Court's September 2022 Order, as amended in its July 2023 Order (the Federal Court Order). Judge Stacie Beckerman mediated the Supremacy Clause issue with OSH counsel, the parties in the criminal case, and counsel for the victims. Mediation was unsuccessful. OSH now requests this Court's assistance in resolving the Supremacy Clause issue.

## **II. Analysis of the Supremacy Clause Issue**

Section II of the Federal Court Order provides: "OSH shall not admit patients except as provided for by the recommendations in the Neutral Expert's Reports or as otherwise provided by this Court." On February 9, 2024, Marion County Circuit Court Judge Audrey Broyles held a hearing regarding whether community restoration was appropriate for a defendant who had been discharged from OSH to Marion County pursuant to the Federal Court Order after receiving restoration services at OSH for six months. Declaration of Craig Johnson (Johnson Decl.), Ex. 1.<sup>1</sup> This defendant's underlying charges include three counts of felony Assault 4 and one count of Criminal Trespass in the Second Degree, as well as

---

<sup>1</sup> This declaration is filed under seal pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

probation violations for person offenses. *Id.* The Marion County District Attorney's Office did not seek an extension of this defendant's length of restoration through any of the avenues provided for in the Federal Court Order. *Id.* ¶ 2.

On February 9, following the hearing, Judge Broyles issued an order, submitted by the Marion County District Attorney's Office, finding that this defendant is a public safety risk and unable to engage in community restoration. *Id.* Instead, Judge Broyles ordered the Marion County Sheriff's Office to transport the defendant every Friday at 10 a.m. on a weekly basis to OSH for "outpatient" restoration services, starting Friday, February 16, 2024, "where custody will transfer for purposes of restoration services until such time as the defendant completes restoration services on that same day." *Id.*

OSH understands, after consultation with the Neutral Expert (Dr. Debra Pinals), that neither this Court's orders nor Dr. Pinals' recommendations contemplate or permit outpatient treatment at OSH for a defendant who has spent the permissible duration of inpatient restoration at OSH under the Federal Court Order. Pursuant to the Supremacy Clause, OSH believes it is precluded from complying with Judge Broyle's order.

### III. Conclusion

In light of February 16, 2024, deadline imposed by Judge Broyles' February 9 order, OSH asks for expedited clarification from this Court whether complying with that order would conflict with the Federal Court Order.

DATED February 15, 2024.

Respectfully submitted,

ELLEN F. ROSENBLUM  
Attorney General

s/ Carla A. Scott  
CARLA A. SCOTT #054725  
Senior Assistant Attorney General  
SHEILA H. POTTER #993485  
Chief Trial Counsel  
CRAIG M. JOHNSON #080902  
Senior Assistant Attorney General  
Trial Attorneys  
Tel (971) 673-1880  
Fax (971) 673-5000  
Carla.A.Scott@doj.state.or.us  
Sheila.Potter@doj.state.or.us  
Craig.M.Johnson@doj.state.or.us  
Of Attorneys for Defendants